

Intelligence Agencies Are Urged to Tell Of Illegal Actions by Americans Abroad

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — Intelligence agencies should be required to tell the Justice Department what they know of illegal activity by Americans overseas, such as foreign bribery by U.S. corporations, a Senate committee said.

The recommendation was contained in a report released yesterday by the Senate Intelligence Committee. It's one of several measures the committee urged Congress and the Executive Branch to take to facilitate the prosecution of cases that touch on sensitive national security matters.

In releasing the report, Sen. Joseph Biden Jr. (D., Del.) argued that enforcement of espionage and secrecy laws is hindered by the ability of defense attorneys to threaten to disclose sensitive information if the government proceeds with its prosecution. Sen. Biden cited a report in this newspaper last week that described this tactic as "a game of chicken" being played out in a number of cases, including foreign-payoffs cases, that touch on sensitive intelligence matters.

"Simply stated, the government refrains from prosecuting certain lawbreakers due to the fear that sensitive information would be revealed in the course of a trial," Sen. Biden said. He characterized this process as

"gray mail" and argued that it hinders law enforcement.

The Senate panel urged tougher prosecution of government officials who leak classified information to the press. Committee staff members said that they had in mind prosecuting only "the worst leaks."

Sen. Biden expressed dismay at the government's "failure" to take action in leak cases. According to the report, the government hasn't taken any action in 30 recent leak cases, chiefly "because of the Department of Justice's policy of refusing to investigate unless the intelligence community is willing to declassify all information related to the case."

The report specifically urged that:

—Congress develop legislation or administrative recommendations to aid the enforcement of espionage laws and to protect intelligence sources, "especially the identities of agents and employees under cover."

—Intelligence agencies "declassify as many as possible of their reports and studies on matters of public concern to discourage the leaking of versions which haven't been sanitized."

—Intelligence agencies punish past and present employees who leak secrets. Pension rights might be withdrawn for former employees who violate security, the committee suggested.

—The attorney general issue guidelines "on the responsibility of the intelligence community to report crimes to the Department of Justice." Committee officials said that such guidelines would require the Central Intelligence Agency to disclose its knowledge of any future foreign payoffs by U.S. companies. According to sources, the CIA has known about some past corporate payoffs partly because some of its agents have been disguised as corporate executives abroad.

—Congress should consider creating a special pretrial proceeding to screen information that would be disclosed in prosecution of cases "where national secrets are likely to arise."

Intelligence agencies should be required to tell the Justice Department what they know of illegal activity by Americans abroad, such as bribery by U.S. firms, the Senate Intelligence Committee said. The recommendation was part of a report in which the panel urges steps to facilitate prosecutions involving leaks of sensitive information.

Panel Backs Making It a Crime to Identify U. Undercover Agents

By Susanna McBee

Washington Post Staff Writer

A Senate subcommittee recommended yesterday that Congress make it a crime to disclose the names of undercover intelligence agents.

But it warned against any "radical restructuring" of the nation's espionage laws, especially the creation of a measure similar to the British Official Secrets Act.

That law prohibits disclosure of any government secret, regardless of whether it affects national security, and permits closed trials of accused violators, including those who receive the information as well as those who leak it.

Such a law in this country would probably not have "an appreciable impact on leaks" and would face "countless practical, legal and political" problems, according to the intelligence secrecy and disclosure subcommittee.

"Any comprehensive law against leaks cannot be effective so long as it is impossible to distinguish between a criminal act and a widely accepted governmental practice," the subcommittee said in a new report on national security secrets and the administration of justice.

It said past presidential orders have "failed to protect the most important national security information by providing for the classification of much information that ought to be made public."

The subcommittee called President Carter's order on classification "an improvement over past practices" and urged the administration to interpret it "with an emphasis on decreasing the amount of unnecessary secrecy."

It said the intelligence community, including the intelligence committees of Congress, "should declassify as many as possible of their reports and studies on matters of public concern" to discourage leaking.

The subcommittee said a law penalizing the identification of a Central Intelligence Agency undercover operative in a way that jeopardized the employee's safety would deal with such disclosures as those made recently by former CIA officer Phillip Agee. Agee, who lives abroad, has written or edited two books that name agents and expose covert CIA operations.

Subcommittee Chairman Joseph R.

proposed law would cover a disclosure like that in The Washington Post last year saying that King Hussein of Jordan had received CIA money.

"That's not the primary thrust and focus of the recommendation," Biden replied. "The idea is to protect a CIA operative who clearly is a professional, full-time agent."

The subcommittee was also concerned about "graymail," in which a defense attorney—representing a defendant accused of, say, bribing government officials, spying for a foreign government, perjury or even murder—threatens to disclose classified information in the course of a trial. To alleviate the practice, the senators recommended:

- A law creating a special closed pretrial proceeding conducted by a judge in which the defendant would reveal what motions or arguments he or she planned to make that would require disclosure of intelligence information.

- A law creating a "secret of state," or national security, privilege to be determined by a judge, also in a closed hearing, in espionage trials.

The subcommittee also recommended that the attorney general issue guidelines under which intelligence agencies would report crimes to the Justice Department, that the FBI continue to have exclusive responsibility to investigate crimes involving the intelligence community, and that security violators who are not prosecuted be subject to administrative sanctions such as dismissal or loss of security clearance.

Sen. Malcolm Wallop (R-Wyo.) called the recommendations "only marginal improvements." He suggested separate judicial proceedings in espionage cases—one in public to determine if the defendant disclosed secrets and another in secret to determine if any harm was done to the nation. Biden questioned the constitutionality of that proposal.

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Panel Says Laws Hinder Security Leak Prosecutions

By Anthony Marro

Special to The Washington Star

The Senate Intelligence Committee has concluded that there has been a "major failure" by the government to take action in leaks of national security information, and that new laws and regulations are needed to permit future prosecution of both leaks and espionage cases.

According to a report released yesterday by the Subcommittee on Secrecy and Disclosure, the committee has been "unable to identify a single successful prosecution of an individual who leaked information to a publication," and has found cases where espionage prosecutions had been hampered.

The chief reason, according to the report, is that defendants in such cases often have engaged in "graymail" — which a committee spokesman described as "something just short of blackmail" — by threatening to disclose even more secrets in open court if a prosecution were attempted.

TERMING THIS practice "a shocking phenomenon which undermines the enforcement of all laws related to intelligence operations," Sen. Joseph R. Biden Jr., D-Del., the subcommittee chairman, said that unless steps are taken to correct this, it will not be possible to enforce laws now being drafted to govern the nation's intelligence agencies.

His point, he said both in a written statement and in a short news conference yesterday is that the same reasons cited by the government for not prosecuting many cases in which intelligence secrets have been compromised also could be cited to block prosecutions of intelligence agents who violate criminal laws.

The report, which is largely the work of three present and former committee staffers, Keith Raffel, Mark Gitenstein and David Bushong, shows that in addition to so-called "national security" leak cases, there have been investigations of bribery, drug dealing and murder — including the initial investigation of Korean influence buying — that have been abandoned for fear that prosecu-

tions would compromise intelligence "sources and methods."

IN ALL SUCH cases, the report says, the common thread has been that the government has pulled back from prosecution after intelligence officials warned that the benefits gained by a prosecution would be outweighed by the harm caused in submitting classified information for use in a public trial.

In fact, the report says, the government in the past has been least willing to prosecute when the leak was the most serious, because it did not want to confirm to other nations that the information was authentic or to disclose in court precisely why its release was considered harmful to national security.

"Indeed, the more sensitive the information compromised, the more difficult it becomes to enforce the laws that guard our national security," it says.

Biden said yesterday that the committee rejected proposals to re-write espionage laws along the lines of the British Official Secrets Act, which makes revelation of any official government information a crime, whether it is linked to the "national security" or not.

It did, however, recommend a series of administrative actions and laws that it says will afford more protection to undercover operatives of the CIA, reduce the impact of "graymail" and make it more feasible for the Justice Department to attempt prosecution of cases involving "national security" leaks.

INCLUDED AMONG the recommendations — which the report said could be taken "while the Congress determines the need for major revisions of the espionage statutes" — are the following:

- A new law to provide "limited further protection of intelligence sources, especially the identities of agents and employees under cover." The report said such a law is needed to protect the names of actual CIA officers and agents, such as were revealed by former CIA officer Philip Agee. Biden, however, said he wasn't sure whether this also would apply to identification of persons such as King Hussein of Jordan, who was reported last year to have received considerable sums of money from the agency.

- Special omnibus pre-trial proceedings, in which defense lawyers would have to tell prosecutors in advance just what sorts of defenses they intend to raise that would result in public airing of classified material. This would allow judges to rule in advance whether the material was relevant or admissible, and thus put the government on notice as to just what it would and would not have to reveal in order to prosecute the case.

- A greater use of administrative sanctions against government employees for security breaches which do not constitute crimes. This could include withdrawal of pension rights of former employees who reveal classified information after they leave the government.

In addition, the committee said that the executive branch of the government should move quickly to decrease "the amount of unnecessary secrecy," and to declassify material which can legitimately be made public.

BIDEN SAID that the recommendations, as drafted, would be aimed at the persons who leak information, not against reporters who receive it and publicize it. He also said that he, personally, considered unconstitutional a proposal by Sen. Malcolm Wallop, R-Wyo., that would create a sort of two-step trial for persons charged with revealing classified material.

The proposal by Wallop, which is contained in an appendix to the report, would have such persons tried in open court on the question of whether in fact they gave information to foreign agents. If the person was found to have violated the law, the trial jury would then meet *in camera* — that is, in secret — to hear evidence on the precise harm that the breach of security had caused.

According to Wallop, this would permit a jury to hear evidence, without having foreign powers made aware of the importance that the defense or intelligence agencies placed on it.

Biden, the subcommittee chairman, however, said that he didn't see how the two issues — whether classified information was transmitted, and whether it was important — could be separated, and thought it might violate constitutional rights to a public trial.

THE SUBCOMMITTEE itself said that the proposed remedies would not solve the problem, and that the only realistic way of solving the problem, a secret trial system for national security cases, was "not in our opinion a very desirable or likely development."

The proposal for special pre-trial hearings in these cases is one that was urged on the subcommittee by Philip Lacovara, a former member of the Watergate Special Prosecutor's office. His argument was that the government often needlessly abandons prosecutions of such cases because of a fear that it will have to reveal classified information that may, in fact, be wholly irrelevant to the case at hand, and ruled inadmissible by the judge.

This procedure, he argued and the committee agreed, would let a judge rule on such materials in advance, and thus would let the government know before going to trial just what sorts of classified information it would and would not have to supply a defendant, and precisely how much would have to be revealed in open court.